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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

9 In re:) Chapter 11
10 NIMBUS BREWING COMPANY, LLC) No. 4:12-bk-08122-EWH
11) UNITED STATES TRUSTEE'S
12) MOTION TO DISMISS, OR
Debtor.) CONVERT TO CHAPTER 7

In furtherance of the administrative responsibilities imposed pursuant to 28 U.S.C. § 586(a)(3), (5) and (8), in addition to 11 U.S.C. § 307, the United States Trustee moves for conversion or dismissal of this case pursuant to 11 U.S.C. § 1112(b). This motion is supported by the entire record before the Court in this case and the below Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 3rd day of September, 2014.

ILENE J. LASHINSKY
United States Trustee
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. Nimbus Brewing Company, LLC, ("Debtor") filed a voluntary
3 petition under Chapter 11 of the Bankruptcy Code on April 17, 2012, and
4 its plan of reorganization was confirmed on January 24, 2014. See
5 docket number 152. More than seven months have passed since the plan
6 was confirmed, but the reorganized debtor has still not sought a final
7 decree.

8 2. 11 U.S.C. § 1112(b)(1) provides that absent unusual
9 circumstances specifically identified by the court that establish that
10 the requested conversion or dismissal is not in the best interests of
11 creditors and the estate, the court shall convert a case under Chapter
12 11 to chapter 7 or dismiss it, whichever is in the best interests of
13 creditors and the estate, if the movant establishes "cause." (Emphasis
14 supplied.)

15 3. "Cause" is defined by 11 U.S.C. § 1112(b)(4) to
16 (non-exclusively) include: (F) un-excused failure to satisfy timely any
17 filing or reporting requirement established by this title or by any rule
18 applicable to a case under this title; (K) failure to pay any fees or
19 charges required under chapter 123 of title 28; (M) Inability to
20 effectuate substantial consummation of a confirmed plan; (N) material
21 default by the debtor with respect to a confirmed plan.

22 4. The United States Trustee's Guidelines and 28 U.S.C.
23 § 586(a)(3) require all post-confirmation debtors to file
24 post-confirmation quarterly operating reports on a quarterly basis.
25 Furthermore, Section 11.6 of the Debtor's Disclosure Statement
26 provides that the debtor will timely file post-confirmation quarterly

1 reports. However, the Debtor has failed to file any such reports since
2 the plan was confirmed.¹ Accordingly, it is delinquent in the filing
3 of reports for the 1st and 2nd quarters of 2014. Its failure to do so
4 constitutes cause under both subsections "F" (failure to satisfy
5 reporting requirements) and "N" (material default) of § 1112(b)(4).

6 5. Payment of quarterly fees to the United States Trustee
7 Program is required by 28 U.S.C. § 1930(a)(6). Furthermore, Section
8 11.6 of the Debtor's Disclosure Statement provides that the debtor will
9 timely file pay all post-confirmation quarterly fees. Quarterly fees
10 are delinquent for 2nd quarter of 2014. The estimated delinquency is
11 \$4,875. Its failure to do so constitutes cause for dismissal or
12 conversion of a chapter 11 case under subsections "K" (failure to pay
13 fees required under chapter 123 of title 28), "M" (inability to effectuate
14 substantial consummation of a confirmed plan), and "N" (material default
15 by the debtor with respect to a confirmed plan) of § 1112(b)(4).

16 6. The fact that more than seven months have passed without
17 the Debtor having filed a motion for entry of a final decree suggests
18 the possibility that this debtor is unable to effectuate substantial
19 consummation of a confirmed plan and/or is in material default of its
20 confirmed plan, thus constituting cause within the meaning of 11 U.S.C.
21 § 1112(b)(4)(M) and (N), respectively.

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26 1 This deficiency was previously called to the attention of the Debtor -
27 but ignored - in the UST's "Notice of Non-Compliance," filed on May 1, 2014
at docket number 157.

7. In the event that the Court does not believe conversion or dismissal to be appropriate at this time, it is alternatively and respectfully requested that the Court set deadlines by which the Debtor must: 1) bring current its post-confirmation operating reports; 2) bring current the payment of its post-confirmation quarterly fees; and 3) file a motion for final decree.

WHEREFORE, the United States Trustee respectfully requests the Court to dismiss this case or convert it to a case under Chapter 7 of the Bankruptcy Code.

RESPECTFULLY SUBMITTED this 3rd day of September, 2014.

ILENE J. LASHINSKY
United States Trustee
District of Arizona

CHRISTOPHER J. PATTOCK
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Copies of the foregoing mailed on
the 4th day of September, 2014, to:

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